

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS85456-MC~~x~~-255B* (05/14)

Short Title: NCSU Nonappropriated Capital Projects. (Public)

Sponsors: Senators Kerr, and Stevens.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF
CERTAIN CAPITAL IMPROVEMENT PROJECTS OF NORTH CAROLINA
STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

PART I: ENERGY CONSERVATION PROJECTS

SECTION 1.1. The purpose of this act is (i) to authorize the construction by North Carolina State University of the energy conservation projects listed in the act and (ii) to authorize the financing of these projects with funds available to the institution from gifts, grants, receipts, energy conservation bond indebtedness or other funds, or any combination of these funds, as permitted by law.

SECTION 1.2. The capital improvement projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1.1 of this act, are as follows:

North Carolina State University	\$53,300,000
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Cates Utility Plant Installation of Multi-Fuel Boilers and a High-Efficiency Chiller	
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Yarbrough Utility Plant Boiler Replacements	
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Centennial Campus Substation Capacity & Redundancy Improvements	
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Sullivan Substation Capacity & Redundancy Improvements	
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SECTION 1.3. Pursuant to G.S. 116D-54(b), the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, energy conservation bonds of the Board of Governors for the purpose of paying all or part of the cost of acquiring, constructing, or providing for the projects authorized by Section 1.2 of this act. The maximum principal amount of bonds to be issued shall not

1 exceed one hundred five percent (105%) the specified project costs in Section 1.2 of this
2 act, of which five percent (5%) shall be allocated to related costs, including issuance
3 expenses, funding of reserve funds, and capitalized interest.

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5 **PART II: STATUTORY AUTHORITY FOR ENERGY CONSERVATION**
6 **BONDS**

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8 **SECTION 2.** Chapter 116D of the General Statutes is amended by adding a
9 new Article to read:

10 "Chapter 116D.

11 "Article 5.

12 "Energy Conservation Bonds for Energy Savings Measures to the Facilities of North
13 Carolina State University.

14 **"§ 116D-50. Purpose.**

15 (a) It is the policy of this State to include in its plans for expansion and
16 improvement of State facilities plans for energy conservation as provided under Article
17 3B of Chapter 143. The General Assembly has determined that the State shall take a
18 leadership role in undertaking the conservation of energy and other utilities in North
19 Carolina, and this conservation will have a beneficial effect on the State's overall supply
20 of energy and other utilities.

21 (b) The general operating costs of the facilities of The University of North
22 Carolina is provided from appropriations by the General Assembly to The University of
23 North Carolina on behalf of its constituent institutions. In the event that the constituent
24 institutions of the University of North Carolina plan their capital improvements in a way
25 to maximize energy conservation, significant savings will result that can be utilized for
26 other purposes by such constituent institutions. It is in the interest of the people of North
27 Carolina that innovative programs be created that maximize energy conservation by the
28 constituent institutions under programs that encourage energy conservation and provide
29 to constituent institutions with such programs the resulting savings to carry out other
30 University purposes.

31 (c) The purpose of this Article is to authorize the Board of Governors of The
32 University of North Carolina to issue energy conservation bonds, payable from utility
33 appropriations and other university funds, but with no pledge of taxes or the faith and
34 credit of the State or any agency or political subdivision of the State, to pay the cost, in
35 whole or in part, of energy conservation measures to the facilities of the University.

36 **"§ 116D-51. Definitions.**

37 The following definitions apply in this Article:

38 (1) Energy conservation bonds. – Bonds issued under this Article to
39 finance the cost of an energy conservation measure, which bonds are
40 secured by and payable from future utility appropriations in
41 accordance with this Article.

42 (2) Energy conservation measure. – Defined in G.S.143-64.17.

43 (3) Energy consumption analysis. – Defined in G.S.143-64.11.

- 1 (4) Energy Office. – The State Energy Office of the Department of
2 Administration.
3 (5) Energy savings. – Defined in G.S.143-64.17.
4 (6) Energy savings analysis. – An engineering and economic report,
5 containing calculations of expected energy savings that are to result
6 from the installation of energy conservation measures on the campus
7 of the Institution as provided in this Article.
8 (7) Institution. – North Carolina State University.
9 (8) Obligated resources. – Defined in G.S.116D-22.
10 (9) Utility appropriations. – Funds appropriated to the Board of Governors
11 or an institution from the General Fund by the General Assembly from
12 funds derived from general revenues of the State for the purposes of
13 paying the cost of providing utility services for the Institution.

14 **"§ 116D-52. Credit and taxing power of State not pledged; statement on face of**
15 **bonds.**

16 Energy conservation bonds issued under this Article shall not constitute a debt or
17 liability of the State or any political subdivision of the State or a pledge of the faith and
18 credit of the State or of any political subdivision of the State. Energy conservation
19 bonds shall be secured by the utility appropriations pledged to their payment as
20 hereinafter provided and any other funds pledged therefor as hereinafter provided. All
21 of the energy conservation bonds shall contain on their face a statement to the effect that
22 neither the State nor the Board of Governors is obligated to pay the bonds or the interest
23 on the bonds except from the utility appropriations pledged for payment or other
24 pledged funds and that neither the faith and credit nor the taxing power of the State or of
25 any political subdivision or instrumentality of the State is pledged to the payment of the
26 principal of or the interest on the bonds. The issuance of energy conservation bonds
27 under this Article does not directly or indirectly or contingently obligate the State or any
28 political subdivision of the State to levy or to pledge any taxes for the bonds.

29 In addition to utility appropriations, to the extent permitted by the agreements with
30 the bondholders under the documents under which energy conservation bonds are issued
31 and under which the Board's other bonds for improvements at the institution are issued,
32 energy conservation bonds may also be secured by a pledge of, or other agreement to
33 apply, obligated resources of the Board with respect to the Institution upon which the
34 energy conservation measure being financed is to be located. The bond documents
35 pursuant to which the energy conservation bonds are issued may provide that such
36 pledge or other agreement to apply obligated resources may be subordinated to pledge
37 or agreements securing other bonds of the Board issued pursuant to Article 3 of Chapter
38 116D or otherwise.

39 **"§ 116D-53. General powers of Board of Governors.**

40 The Board of Governors is authorized, subject to the requirements of this Article, to
41 do all of the following:

- 42 (1) Determine the location and character of any energy conservation
43 measure, to acquire, construct, and provide the project, and to
44 maintain, repair, operate, and enter into contracts for the management,

1 lease, use, or operation of all or any portion of any energy
2 conservation measure and any existing facilities.

3 (2) Issue energy conservation bonds to pay all or any part of the cost of an
4 energy conservation measure, and to fund or refund any bonds
5 previously issued by the Board of Governors to finance facilities
6 designated as an energy conservation measure.

7 (3) Enter into all contracts and agreements necessary or incidental to the
8 performance of its duties and the execution of its powers under this
9 Article.

10 (4) Do all acts and things necessary or convenient to carry out the powers
11 granted by this Article.

12 **"§ 116D-54. Issuance of energy conservation bonds and bond anticipation notes.**

13 (a) Authority. – The Board of Governors may issue, subject to the approval of
14 the Director of the Budget, at one time or from time to time, energy conservation bonds
15 of the Board of Governors for the purpose of paying all or any part of the cost of
16 acquiring, constructing, or providing an energy conservation measure. Before issuing
17 energy conservation bonds, the Board of Governors shall first adopt a resolution (i)
18 setting forth the energy conservation measure being financed and (ii) designating the
19 utility appropriations that will secure and be the source of payment of the energy
20 conservation bonds to be issued. The Board of Governors shall not issue any energy
21 conservation bonds unless the Board of Governors finds that sufficient utility
22 appropriations are reasonably expected to be available to pay the principal and interest
23 on the energy conservation bonds proposed to be issued.

24 (b) Approval Required. – The Board of Governors shall not issue energy
25 conservation bonds under this Article until the effective date of legislation enacted by
26 the General Assembly authorizing the undertaking of the energy conservation measure
27 to be financed and fixing the maximum aggregate principal amount of energy
28 conservation bonds that shall be issued for that purpose.

29 Except as provided in this Article, energy conservation measures may be
30 undertaken, energy conservation bonds may be issued, and other powers vested in the
31 Board of Governors under this Article may be exercised by the Board without obtaining
32 the consent of any department, division, commission, board, bureau, or agency of the
33 State and without any other proceedings or the happening of any other conditions or
34 things other than those proceedings, conditions, or things which are specifically
35 required by this Article.

36 (c) Term. – The energy conservation bonds of each issue shall be dated, shall
37 mature at any times not exceeding 30 years from their dates, shall bear interest at any
38 rates as may be determined by the Board of Governors, and may be redeemable before
39 maturity at the option of the Board, at any prices and under any terms and conditions as
40 may be fixed by the Board prior to the issuance of the energy conservation bonds. The
41 Board of Governors shall determine the form and manner of execution of the energy
42 conservation bonds and shall fix the denominations of the energy conservation bonds
43 and the places of payment of principal and interest, which may be at any bank or trust
44 company within or without the State. Notwithstanding any of the other provisions of

1 this Article or any recitals in any energy conservation bonds issued under the provisions
2 of this Article, all energy conservation bonds shall be negotiable instruments under the
3 laws of this State, subject only to the provisions for registration in a resolution
4 authorizing the issuance of the energy conservation bonds or a trust agreement securing
5 the bonds. The Board of Governors may sell the energy conservation bonds in any
6 manner, at public or private sale, and for any price, as it may determine to be for its best
7 interests.

8 **"§ 116D-55. Trust agreement; money received deemed trust funds; insurance;**
9 **remedies.**

10 (a) Trust Agreement Securing Bonds. – In the discretion of the Board of
11 Governors and subject to the approval of the Director of the Budget, any energy
12 conservation bonds issued under this Article may be secured by a trust agreement by
13 and between the Board of Governors and a corporate trustee, which may be any trust
14 company or bank having the powers of a trust company within or without the State. The
15 trust agreement or the resolution providing for the issuance of energy conservation
16 bonds may pledge or assign the utility appropriations designated as security for the
17 energy conservation bonds, but shall not convey or mortgage any property of the
18 institution. The trust agreement or resolution providing for the issuance of energy
19 conservation bonds may contain provisions for protecting and enforcing the rights and
20 remedies of the holders of the energy conservation bonds that are reasonable and proper
21 and not in violation of law, including covenants setting forth the duties of the Board of
22 Governors in relation to the acquisition, construction, or provision of any of the
23 charging and collecting of any rates, fees, or charges that have been designated as utility
24 appropriations, the maintenance, repair, operation, and insurance of any property of the
25 institution, and the custody, safeguarding, and application of all moneys. It shall be
26 lawful for any bank or trust company incorporated under the laws of the State which
27 may act as depository of the proceeds of energy conservation bonds or funds securing
28 energy conservation bonds to furnish any indemnifying bonds or to pledge any
29 securities as may be required by the Board of Governors. A trust agreement or
30 resolution may set forth the rights and remedies of the holders of the energy
31 conservation bonds and the rights, remedies, and immunities of the trustee or trustees, if
32 any, and may restrict the individual right of action by the holders. In addition to the
33 foregoing, a trust agreement or resolution may contain other provisions the Board of
34 Governors considers reasonable and proper for the security of the holders. All expenses
35 incurred in carrying out the provisions of the trust agreement or resolution may be
36 treated as a part of the cost of the energy conservation measures for which the energy
37 conservation bonds are issued or as an expense of operation of the energy conservation
38 measure.

39 (b) Trust Funds. – All moneys received pursuant to the authority of this Article,
40 whether as proceeds from the sale of bonds, or as utility appropriations, are trust funds
41 to be held and applied solely as provided in this Article. The Board of Governors may
42 provide for the payment of all or part of the proceeds of the sale of the energy
43 conservation bonds and the utility appropriations to any officer, board, or depository
44 that it may designate for their custody, and may provide for their method of

1 disbursement, with any safeguards and restrictions it may determine. Any officer with
2 whom, or any bank or trust company with which, moneys are deposited shall act as
3 trustee of the moneys and shall hold and apply them for the purposes of this Article,
4 subject to any requirements provided in this Article and in the resolution or trust
5 agreement, authorizing or securing the energy conservation bonds.

6 **"§ 116D-56. Energy savings analysis; future utility appropriations.**

7 (a) Energy Savings Analysis. – Prior to the financing and installation of any
8 energy conservation measure, an energy savings analysis shall be performed by a third
9 party selected by the Institution to validate the economic analysis supporting the
10 financing of the improvements. The energy savings analysis shall be submitted to the
11 University of North Carolina General Administration and to the State Energy Office. No
12 energy conservation measure shall be undertaken or financed hereunder unless the
13 Energy Savings Analysis projects sufficient energy savings to pay the debt service on
14 the bonds to be issued to finance the improvements. The Energy Savings Analysis shall
15 include an energy consumption analysis to develop a baseline of all utilities energy
16 consumption and costs for the Institution on the assumption that the energy conservation
17 measure was not undertaken.

18 (b) Annual Measurement. – It is the intention of the General Assembly that
19 appropriations be made to the Board of Governors on behalf of the Institution of the
20 amount that would have been appropriated to the Institution to provide for the costs of
21 utilities for the Institution had the energy conservation measure not been undertaken.
22 The Institution for which an energy conservation measure is financed hereunder shall
23 retain a third party to perform an annual measurement and verification of energy
24 savings resulting from the energy conservation measure as compared to the energy costs
25 that would have resulted from the baseline described in subsection (a) of this section.

26 The third party shall provide an annual reconciliation statement based upon the
27 results of the measurement and verification review. The statement shall disclose any
28 shortfalls or surplus between estimated energy usage and operational savings specified
29 in the life cycle cost analysis and actual, not stipulated, energy and operational savings
30 incurred during a given year.

31 In the event of a force majeure, including worldwide fuel shortage, war, terrorism,
32 riot, and forces beyond the State's control, a ceiling rate on fuel escalations will be
33 imposed and applied to the annual calculation, with the fuel escalation ceiling rate to be
34 sixty percent (60%) above baseline rate based on National Institutes of Standards and
35 Technology's (NIST) published "Energy Price Indices and Discount Factors for
36 Life-Cycle Cost Analysis – April 2007" annual supplement to NIST handbook 135 and
37 NBS Special Publication 709.

38 The Institution shall be responsible for any shortfall in the energy and operational
39 savings after the total year savings have been determined. The shortfall shall be paid by
40 the Institution. Any surplus in avoided costs will be retained by the Institution. The
41 Institution shall not be held responsible for losses due to natural disaster in the
42 calculations for energy savings.

43 (c) Retained Savings. – Following the payment of the bonds issued pursuant to
44 this act, the Institution shall retain any additional savings to fund additional energy

1 conservation projects. Notwithstanding the foregoing, the appropriation of utility
2 appropriations during any future fiscal biennium or fiscal year shall be limited to funds
3 appropriated for that purpose by the General Assembly in its discretion. No provision of
4 this Article and no financing contract or any other related documentation shall be
5 construed or interpreted as creating a pledge of the faith and credit of the State or any
6 agency, department, or commission of the State within the meaning of any
7 constitutional debt limitation.

8 **"§ 116D-57. Additional and alternative method.**

9 This Article provides an additional and alternative method for the doing of the things
10 authorized and is supplemental and additional to powers conferred by other laws, and is
11 not in derogation of or repealing any powers now existing under any other law, whether
12 general, special, or local. The issuance of energy conservation bonds or refunding bonds
13 under this Article, however, need not comply with the requirements of any other law
14 applicable to the issuance of bonds."

15 **SECTION 3.** This act is effective when it becomes law.